ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives

Committee on Energy and Commerce

Washington, DC 20515–6115

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

July 25, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 00-256

Dear Chairman Powell:

When Congress enacted the Telecommunications Act of 1996 ("1996 Act"), it anticipated that regulatory changes would be necessary to keep pace with an increasingly competitive telecommunications market. Dramatic and significant changes in technology, competition, customer demand, and even in the number of companies offering services today, are continuing to take place.

In today's marketplace, archaic, one-size-fits-all regulatory schemes – especially for smaller and mid-sized rural carriers – are no longer appropriate. Regulations should reflect the realities of this new environment by allowing reasonable flexibility and stimulating the capital investment necessary to deliver new and advanced services to consumers.

The Federal Communications Commission's ("the Commission") price cap "All-or-Nothing" rule (Section 61.41) is an example of an out-dated regulatory scheme that is not just unnecessary, but actually is counterproductive to creating a more competitive telecommunications market. In its present form, this mandate costs carriers, and in turn the public, millions in wasted resources and missed investment opportunities. The "All-or-Nothing Rule" has the most adverse impact on mid-sized and small telephone companies – those companies least able to absorb the related regulatory costs and that are in the greatest need of regulatory balance to continue making investments in rural markets. As the rule is written today, it creates regulatory disincentives for smaller incumbent local exchange carriers ("LECs") that wish to acquire and improve rural access lines from larger price cap companies. It also prohibits those same companies from electing an optional interstate regulatory structure that could reduce costs, create efficiencies, and allow them to align their business plans with the investment needs of rural markets.

Specifically, the "All-or-Nothing" rule requires that when a rate-of-return company acquires or merges with a price cap company (or vice versa), the rate of return affiliates be converted to price cap regulation within one year (Section 61.41(c)(2)). In addition, once a LEC files a federal price cap tariff,

all its affiliates (except "average schedule" companies with fewer than 50,000 lines) *must* file price cap tariffs for their interstate rates (Section 61.41(b)), and LECs that become subject to price cap regulation are not eligible to withdraw from price caps (the so-called "One-Way Door" rule, Section 61.41 (d)). Consequently, LECs that would not otherwise be subject to price cap regulation may be forced to convert their entire operation to price caps simply by buying exchanges from a price cap carrier, and cannot return to rate-of-return regulation unless they obtain a waiver from the Commission.

The price cap "All-or-Nothing" rule was implemented in the *LEC Price Cap Reconsideration Order* more than a decade ago and was designed to remove the incentive for a local exchange company to engage in improper cost shifting between a price cap affiliate and a rate-of-return affiliate. As the Commission has since acknowledged, the concern underlying the rule turned out to be more speculative than real. Today, companies have little incentive or ability to improperly shift costs between rate-of-return and price cap affiliates because of ample state regulatory oversight, federal and state regulatory accounting safeguards, and the tariff review processes already in place. These safeguards enable detection of any improper behavior, and the Commission and State regulatory agencies have a variety of effective enforcement tools at their disposal in the event of any abuse.

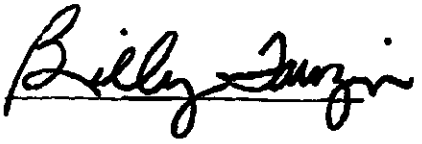
The pooling "All-or-Nothing" rule also prohibits affiliated companies from electing to participate in the NECA "pool" (tariff) for interstate common line access charges, for some of their affiliates but not others. Section 69.3(e)(9) of the Commission's rules requires that if a LEC chooses to withdraw one of its study areas from the NECA common line pool in order to file its own carrier common line tariff, the LEC must then withdraw all of its study areas from the pool. Thus, if a carrier desires to elect price caps and exit the NECA pool for one study area, it must do so for all its affiliates.

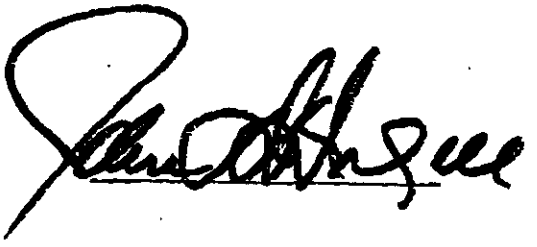
Neither of these rules reflects the realities of today's rapidly changing telecommunications market. The current rules are overly restrictive in that smaller LECs and mid-size companies are forced to choose a form of regulation that does not always allow them to operate as efficiently as possible, and does not reflect the highly diverse markets they serve.

The Commission has been routinely granting waivers of these rules for the past several years as the divestiture of rural and Bell operating company lines has accelerated. However, the "All-or-Nothing" rules remain in effect and continue to add a layer of uncertainty in the critical business planning of smaller companies. These rules result in operational inefficiencies and disincentives to make new investments in the network, both of which inure directly to the detriment of consumers.

We are encouraged that the FCC is presently reviewing Section 61.41 of its rules (the price cap "All-or-Nothing" rule) as part of the *FNPRM* in CC Docket 00-256 (FCC 01-304), relating to incentive regulation and pricing flexibility for rate-of-return companies. We are writing to encourage you to repeal both of the "All-or-Nothing" rules as quickly as possible to allow telecommunications providers to rapidly expand network investment and bring advanced services to consumers in both small and rural markets.

Sincerely,





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